

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN JOSEPH TALASKE,

Defendant-Appellant.

UNPUBLISHED

April 11, 2006

No. 258073

Livingston Circuit Court

LC No. 03-013914-FH

Before: Kelly, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of four counts of moving his horses in violation of a quarantine imposed by the Michigan Department of Agriculture (MDA), MCL 287.744(1)(c). Defendant was sentenced to 18 months' probation with the last 30 days in jail. The jail time was held in abeyance and was to be waived if defendant showed himself to be a "model probationer." Defendant was also ordered to pay certain costs and fees and sell all but one of his remaining horses. We affirm.

Defendant was the owner of 14 horses that were placed under a quarantine by MDA because they had not received a state-mandated test to determine whether they had equine infectious anemia. On May 2, 2003, an MDA compliance officer issued a written notice of quarantine to the manager of Nanjo Farms, where defendant's horses were boarded. The officer did not give defendant a copy of the notice at that time, but orally informed him on several occasions that his horses were under quarantine and could not be moved without permission from the MDA. However, on July 22 and 23, 2003, defendant removed eight of his horses from Nanjo Farms despite the quarantine order. Testimony from the manager of Nanjo Farms revealed that defendant was under court order to remove the horses by July 23, 2003, at 9:00 a.m. as a result of a suit for eviction that she filed against him.

Subsequently, defendant was charged under MCL 287.244(1)(c), which makes it a felony to "intentionally violat[e] a condition of quarantine authorized under section 12 or movement restrictions and other requirements authorized under section 9." Section 12 gives the director of the MDA authority to issue a quarantine for the purpose of controlling or preventing the spread of a "known or suspected infectious, contagious, or toxicological disease." MCL 287.712(1). It also provides that a person shall not move animals that are under quarantine without permission from the director of the MDA. *Id.*

On appeal, defendant claims that the trial court erred by instructing the jury that, as an element of the offense, the prosecution must show that defendant “had knowledge of the quarantine on his horses.” Defendant argues that the jury should have been instructed that the prosecution’s burden was to show that defendant “had received the quarantine document regarding his horses.” We disagree.

Defendant properly preserved this issue for review by objecting at trial before the instructions were read to the jury. MCR 2.516(C); *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003). Claims of instructional error and questions of statutory interpretation are reviewed de novo. *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998). A preserved, nonconstitutional error is grounds for reversal if it is more probable than not that it resulted in a miscarriage of justice. *People v Lukity*, 460 Mich 484, 493; 596 NW2d 607 (1999). A miscarriage of justice occurs when an error in the instructions to the jury undermines the reliability of the verdict. *People v Rodriguez*, 463 Mich 466, 474; 620 NW2d 13 (2000).

Defendant argues that personal service of a written quarantine document is a necessary element of an intentional violation under MCL 287.744(1)(c). Plaintiff responds that the statute contains no written notice requirement, and, therefore, the instructions correctly stated the applicable law. Defendant himself notes that no administrative rule or statutory provision mandates written notice of the quarantine.

When interpreting statutes, the primary goal of the judiciary is to “ascertain and give effect to the intent of the Legislature.” *Polkton Twp v Pellgrom*, 265 Mich App 88, 101-102; 693 NW2d 170 (2005). To determine intent, this Court looks first to the specific language of the statute. *Id.* at 102. If the plain and ordinary language of the statute is clear, “judicial construction is neither necessary nor permitted.” *Id.* at 103.

In this case, MCL 387.744(1)(c) provides that a person who “intentionally” violates an authorized quarantine is guilty of a felony. “Intentional” is defined to mean “‘done with intention or on purpose’” *In re Certified Question from the US Court of Appeals for the Sixth Circuit*, 468 Mich 109, 114; 659 NW2d 597 (2003), quoting *Random House Webster’s College Dictionary* (1991). To act with purpose necessarily implies knowledge of the act intentionally done. Black’s Law Dictionary (8th ed) (internal citation omitted) (“‘Intention is . . . the foreknowledge of the act, coupled with the desire of it’”). Thus, to be subject to criminal liability under the statute a person must have knowledge or awareness of the quarantine and the desire to violate it. However, there is nothing in the statute or the common understanding of knowledge¹ that requires that the person obtain this knowledge by a written notice. Because the language is unambiguous, this Court must give the words their plain meaning and apply the statute as written. See *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004).

¹ “Knowledge” is defined in part to mean “acquaintance with the facts, truth, or principles” or “awareness” *Random House Webster’s College Dictionary* (1997).

Further, the omission of a provision in one section of statute that is included elsewhere should be construed as intentional. *Polkton Twp, supra* at 102. Other provisions of the Animal Industry Act, see, e.g., MCL 287.714(2), require the MDA director to act according to “rules promulgated by the department.” Other statutes addressing related concerns demonstrate that the Legislature will include explicit notice requirements if it wishes to do so. See, e.g., MCL 287.117 (requiring the MDA to notify violator personally or by certified mail when removing abused or neglected horses). The Animal Industry Act does not place similar limitations on the authority of the MDA director when issuing a quarantine.

The language in the quarantine document does not render the statute ambiguous. The document given to the Nanjo Farms manager stated that “this quarantine is imposed to control the spread of equine infectious anemia and is effective from the date of receipt by owner until released by the Michigan Department of Agriculture.” Defendant argues that this language means that a quarantine is only effective from the date that a copy of that document is received. By its own terms, however, the document is not necessarily the exclusive mechanism by which the MDA can impose a quarantine. Further, defendant offers no legal authority to support his argument that this form should have the force of law. An agency can issue materials that do not have the force and effect of law but are merely explanatory, such as forms with instructions, guidelines, interpretive statements, and informational pamphlets. MCL 24.207(h); *By Lo Oil Co v Dep’t of Treasury*, 267 Mich App 19, 46; 703 NW2d 822 (2005). The “effective date” language of the quarantine that defendant refers to is explanatory and informs the recipient of the effect of the form. It does not, however, limit the MDA’s authority to provide oral or other notice of a quarantine.

In essence, defendant asks the Court to read into the statute a requirement that a quarantine is effective only if affected parties are notified in writing. We will not add into a clear statute provisions that the Legislature did not include. *In re Wayne Co Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998). Therefore, because the law only requires knowledge, the trial court did not err in rejecting defendant’s proposed instruction requiring the prosecution to show that defendant received written notice of the quarantine. A defendant is not entitled to an instruction on his theory of the case if it would be a misstatement the law. *People v Johnson*, 83 Mich App 1, 15; 268 NW2d 259 (1978).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Michael J. Talbot